IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2024

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.240 of 2019

T.Anbalagan (Retired) ... Petitioner

Vs.

1. The Secretary to Government,
   Home (Police) Department,
   Government of Tamil Nadu,
   Chennai – 9.

2. The Director General of Police,
   Tamil Nadu, Chennai – 600 004.

3. The Accountant General,
   (Accounts and Entitlements),
   Tamil Nadu, Teynampet,
   Chennai – 18.

4. The Commissioner of Police,
   Chennai Sub-Urban Police,
   St. Thomas Mount,
   Chennai – 18. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 2nd respondent in connection with the order passed by him in Endt/037256/pension-1/2011, dated 28.1.2016 and quash the same consequently direct the 2nd respondent to include the petitioners service rendered in military as well as BHEL (5 years 318 days and 4 years 59 days respectively) for the purpose of pensionary benefits and pension proposals at an early date as fixed by this Honble Court.

For Petitioner : Mr.Venkataramani, Senior Counsel for Mr.Muthappan

For R1, R2 & R4 : M/s.E.Ranganayaki, Additional Government Pleader

For R3 : M/s.J.Sreevidya

ORDER

The petitioner herein was initially appointed on 09.03.1977 in the Indian Army, EME Corps as Telecom Radar Mechanic and he was discharged from the Army on 25.02.1983 after completing service of 5 years 11 months and 16 days. Thereafter, the petitioner was directly recruited as 'Security Sub-Inspector, Grade-III' on 26.07.1983 in Bharat Heavy Electricals Limited (BHEL), Ranipet, Vellore District through Employment Exchange and worked in the said post till 25.09.1987 on which date, the resignation submitted by the petitioner was accepted. In the meanwhile, the petitioner got selected to the post of Sub-Inspector of Police on 28.09.1987 in the State Service and he was thereafter promoted to the post of 'Inspector of Police' on 26.11.1998 and finally the petitioner retired from service on attaining the age of superannuation on 31.07.2011.

2. While the petitioner was in service, in the year 2007, the petitioner made a claim for counting the service rendered by him in the Indian Army for a

period of 5 years 11 months and 16 days and the service rendered in Bharat Heavy Electricals Limited, Ranipet, Vellore District for a period of 4 years 1 month and 19 days for the purpose of counting the qualifying service for payment of pensionary benefits. While considering the claim of the petitioner, there was certain correspondence among the respondents for some time. However, the claim of the petitioner for counting the past service for the purpose of qualifying service for payment of pension in terms of the Tamil Nadu Pension Rules, 1978 (hereinafter referred to as 'the Rules, 1978' for short) was rejected by the Respondent No.2 through Endorsement No.037256/Pension-1/2011 dated 28.01.2016. It is aggrieved by the said proceedings, the petitioner filed the present Writ Petition.

3. There is no dispute on the factual aspects. The petitioner on being appointed as 'Sub-Inspector of Police' in the State Service with effect from 28.09.1987, he was governed by the Rules that apply to the said post and the pensionary benefits for which the petitioner is entitled to is governed by the Rules, 1978. Therefore, any claim that is being made by the petitioner for counting the past service rendered by him prior to his appointment as 'Sub-Inspector of Police' in the State Service can be claimed strictly in terms of the Rules, 1978 but not otherwise.

4. As seen from the affidavit filed in support of the Writ Petition, the petitioner is making a claim for counting of the past service for payment of pensionary benefits under Civil Service by placing reliance on the Sub-Rule (3) of Rule 16 of the Rules, 1978. Sub-Rule (3) of Rule 16 of the Rules, 1978 applies to the Government Servant, who opts under clause (b) of Sub-Rule (1) of Rule 16. Therefore, firstly, it is necessary to see whether the petitioner has exercised his option to claim the benefit under Clause (b) of Sub Rule (1) of the Rule 16 or not. Secondly, it has to be examined as to whether the petitioner is entitled to claim the benefit under Rule 16(1) of the Rules, 1978 or not. It is only in case if the petitioner is able to establish that he is entitled for the benefit under Rule 16(1), the question of considering the claim made by the petitioner unde Sub-Rule (3) of Rule 16 would fall for further consideration. Rule 16 which is relevant for the purpose of this case is extracted herein:-

> *" 16...**Counting of military service rendered before civil employment**. (1) A Government servant who is re-employed in a civil service or post before attaining the age of superannuation and who, before re-employment had rendered military service after attaining the age of eighteen years, may [] opt either, -*
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> *(a) to continue to draw the military pension or retain gratuity received on discharge from military service, in which case his former military service shall not count as qualifying service; or*

(b) to cease to draw his pension and refund,

(i) the pension already drawn, and

(ii) the value received for the commutation of a part of military pension, and (iii) the amount of death cum-retirement gratuity including service gratuity, "[if any along with the interest at the rate of six percent from the date of rejoining by such Government Servant in the civil service or post.]

and count previous military service as qualifying service, in which case the service as allowed to count shall be restricted to a service within or outside the employee's unit or department in India or elsewhere which is paid from the Consolidated Fund of India or for which pensionary contribution has been received by the Government:"

5. From the above Rule, it is evident that the Government Servant, who is re-employed in a Civil Service and rendered military service before such re-employment may opt either to continue to draw military pension or retain Gratuity received on discharge from military service. In case, if the Government Servant opts to receive the military pension or to retain the Gratuity received and discharged from military service, such Government Servant shall not be entitled to count the military service as qualifying service for the purpose of pension in Civil Service. Under Clause (b) of the Sub-Rule (1),

(i) in case if the Government Servant opts to cease to draw his pension and refund the pension already drawn;

(ii) the value received for the commutation of a part of military pension; and

(iii)the amount of Death-cum-Retirement Gratuity including the Service Gratuity etc., then he is entitled to count the military service as qualifying service for the purpose of calculating the pensionary benefits in Civil Service.

6. From the above, it is evident that the Government Servant, who rendered military service prior to his re-employment in Civil Service and became eligible to draw pension is only entitled to exercise the option provided under Sub-Rule (1) of Rule 16 subject to fulfilling the conditions stipulated under Clause (b) of Sub-Rule (1) of Rule 16. But, in the instant case, it is not even the case of the petitioner that he has been drawing any military pension nor he has put in the requisite minimum service for the purpose of drawing military pension. In the absence of the petitioner being granted any military pension, the question of the petitioner exercising the option provided under Clause (a) and (b) of Sub-Rule (1) of the Rule 16 does not arise. Even otherwise, in terms of Clause (a) of Sub-Rule (2) of Rule 16 read with proviso, a re-employed military personnel in Civil Service or post prior to 13.02.1995 shall be allowed to exercise option under Sub Rule (I) within a period of six months from the date of 13.02.1995 for counting his military service as qualifying service in Civil

Service or post. Admittedly, in the instant case, the petitioner has never exercised any such option within the time prescribed or thereafter. In the absence of exercising any option and having not put in the minimum qualifying service for drawing military pension, the question of permitting the petitioner to count the military service rendered by the petitioner as qualifying service for the purpose of pensionary benefits under the Civil Service does not arise. Hence, the entire claim made by the petitioner for the said benefit is totally misconceived.

7. The reliance placed by Sri.G.Venkataramani, learned Senior Counsel on a decision of the learned Division Bench of this Court in W.A.No.958 of 2011 dated 18.03.2013 has no application to the case on hand. In the said case, the learned Division Bench was dealing with the pension rules of the Chennai Port Trust, but not under the Tamil Nadu Pension Rules, 1978. Further, the learned Division Bench has also taken into consideration the fact that there is no regulation prohibiting payment of civil pension by taking into consideration the military service rendered by a Government Servant therein. But, in the instant case, the issue is completely governed by Rule 16 of the Rules, 1978. Therefore, the said decision of the learned Division Bench of this Court has no application to the case on hand. Yet another decision of a learned Single Judge of this Court in W.P.No.17043 of 2017 dated 22.09.2021 relied upon by the learned counsel

for the petitioner also has no application to the facts on hand, as the same was rendered only by following the decision of the learned Division Bench referred to herein above.

8. Further, the reliance placed by the learned counsel for the petitioner on G.O (Ms) No.1093, Finance (Pension) Department dated 10.10.1990 and G.O (Ms) No.404, Finance (BPE) Department dated 06.06.1991 also have of no help to advance the case of the petitioner. The G.O (Ms) No.1093 dated 10.10.1990 directs counting of approved military/war service for the purpose of qualifying service along with Civil Service. But in the instant case, the military service that was rendered by the petitioner was not shown to be approved military service. On the other hand, the said service does not entitle the petitioner to draw military pension. The orders issued in G.O (Ms) No.404 dated 06.06.1991 are applicable to the employees, who were absorbed in the service of the State Government from the services of the Central Government or Central Autonomous Bodies or State Government or State Autonomous Bodies. In the instant case, the petitioner was directly appointed to the post of 'Sub-Inspector of Police' in the Civil Service, but not by way of absorption. Therefore, the said Government Order also is of no help to advance the case of the petitioner.

9. In the light of the above, this Court does not find any error or illegality in the impugned order and there are no merits in the claim made by the petitioner. The Death-cum-Retirement Gratuity and other amounts stated to have been refunded by the petitioner to military authorities is concerned, it is open for the petitioner to re-claim the said amounts in accordance with law.

10. Subject to above observations, the Writ Petition is dismissed. No costs. Connected Miscellaneous Petitions, if any shall stand closed.

25.07.2024

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Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No

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MUMMINENI SUDHEER KUMAR, J.

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